Ct. Bur. Court of Chancery

A COLLECTION

OF

Such of the ORDERS

Heretofore used in

CHANCERY;

With such Alterations and Additions thereunto, as the right Honorable *Edward* Earl of *Clarendon* Lord Chancellor of *England*,

By and with the advice and assistance of the Honorable Sir *Harbottle Grimston* Baronet, Master of the ROLLS,

Have thought fit at present to Ordain and Publish,

For

Reforming of several Abuses in the said Court, preventing multiplicity of Suits, Motions, and unnecessary Charge to the Suiters, and for their more expeditious and certain course for Relief.

London, Printed for *Humphry Tuckey*, and are to be sold by the Booksellers in *Fleetstreet Chancery-Lane* and *Holborne*, 1669.

Rec. Mar 1, 1899.

A COLLECTION of such of the ORDERS heretofore used in Chancery.

Bills.

THat no Councellor do put his hand to any Bill, Answer, or other pleading, unless it be drawn, or

at leaſt peruſed by himſelf in the paper draught before it be ingroſſed (which they ſhall do well for their own diſcharge, to ſign alſo after peruſal) And Council are to take care that the ſame be not ſtuffed with repetition of Deeds, Writings, or Records, *in hæc verba*: but the effect and ſubſtance of ſo much of them only as is pertinent and material to be ſet down, and that in brief terms, without long and needleſs Traverſes of points not traverſable, tautologies, multiplication of words, or other impertinencies occaſioning needleſs prolixity, to the end the ancient

Brevity

Brevity and ſuccinctneſs in Bills, and other pleadings, may be reſtored and obſerved: Much leſs may any Council inſert therein matter meerly criminous, or ſcandalous, under the penalty of good coſts to be laid on ſuch Council, and paid to the party grieved, before ſuch Council be heard in Court.

That all Bills be dated the ſame day they are brought into the Six Clerks Office, and that no Six Clerk preſume to Antedate any Bill, and that no Under-clerk preſume to keep any Bill by him, but with the firſt opportunity de-

liver the same to the Six Clerk, or his allowed Deputy, in his absence to be accordingly filed.

No Bills, Answer, or other pleading shall be said to be of Record, or to be of any effect in Court until the same be filed with such of the Six Clerks with whom it ought properly to remain.

Subpœna's.

THat all Plaintiffs may have liberty to take forth *Subpœna's ad respondendum*, before the filing of their Bills, if they please,

please, notwithstanding any late Order or usage to the contrary.

That every *Subpœna* to answer, revive, review, rejoyn, to testifie or to hear judgement, shall be served personally, or left at the Defendants dwelling house or place of residence, with one of that Family. And no Clerk of this Court shall issue any Attachment for not appearing, but upon Affidavit first made, positive and certain of the day and place of such service of the *Subpœna*, and the time of the Return thereof, whereby it shall appear that such service

was

was made, if in *London*, or within twenty miles thereof, four dayes at the leaſt, excluding the day of ſuch ſervice: And if above twenty miles, then to have been eight dayes before ſuch Attachment entered: And that ſuch Attachment ſhall not be diſcharged, but upon payment of uſual coſts, and ſo the ſucceeding coſts to be double.

Pleas and Demurrers.

FOraſmuch as the Defendant being ſerved with proceſs

ceſs to anſwer, may by advice of Council upon ſight of the Bill, only be enabled to demurr thereunto, if there be cauſe, or may by like advice be enabled to put in any juſt plea, which he hath in diſability of the perſon of the Plaintiff, or to the Juriſdiction of the Court: It is therefore Ordered, That ſuch *Demurrer*, or ſuch plea in diſability, or to the Juriſdiction of the Court, under the hand of Council learned, ſhall be received and filed; although the *Defendant* do not deliver the ſame in perſon, or by Commiſſion. And therefore if the *Defendant* ſhall pray a Commiſſion,

miſſion, and thereby return a Demurrer only, or only ſuch a plea, which ſhall be afterwards over-ruled, the Defendant ſhall pay five marks coſts: and although it be allowed, the Defendant ſhall have no coſts in reſpect of the Plaintiffs needleſs trouble occaſion'd by ſuch Commiſſion.

Every Demurrer ſhall expreſs the ſeveral cauſes of Demurrer, and ſhall be determined in open Court. And ſuch Pleas alſo as are grounded upon the ſubſtance and body of the matter, or extend to the jurisdiction of the Court, ſhall be determined in open Court.

And

And for that purpoſe, the Defendant is to enter the ſame with the Regiſter, within eight dayes after the filing thereof; or in default of ſuch entry made, the ſame ſhall be diſallowed of courſe, as put in for delay. And the Plaintiff may then take out proceſs to enforce the Defendant to make a better anſwer, and pay forty ſhillings coſts: and the ſame ſhall not afterwards be admitted to be ſet down or debated, unleſs upon motion it ſhall be ordered by the Court; And if any cauſe of Demurrer ſhall ariſe, and be inſiſted on at the debate of the Demurrer (more than is par-

particularly alledged, yet the Defendant ſhall pay the ordinary coſts of Over-ruling a Demurrer (which is hereby Ordered to be five marks coſts) if thoſe cauſes which are particularly alledged be diſallowed: although the Bill in reſpect of that particular ſo newly alledged, ſhall be diſmiſſed by the Court.

A Plea of Outlawry, if it be in any ſuit for that duty, touching which relief is ſought by the Bill, is inſufficient according to the Rule of Law, and ſhall be diſallowed of courſe as pu[illegible]

in

in for delay: And the Plaintiff may notwithſtanding ſuch Plea, take out proceſs to enforce the Defendant to make a better anſwer, and pay five Marks coſts; otherwiſe a Plea of Outlawry is alwayes a good Plea, ſo long as the Outlawry remaineth in force: And therefore the Defendant ſhall not be put to ſet it down with the Regiſter: And after the ſaid Outlawry reverſed, the Defendant upon a new *Subpœna* ſerved on him, and payment unto him of twenty ſhillings coſts, ſhall anſwer the ſame Bill, as if ſuch Out-

Outlawry had not been: But if the Plaintiff conceive such Plea of Outlawry thorough mispleading, or otherwise to be insufficient, he may, upon notice given to the Clerk on the other side, set it down with the Register, to be debated with the rest of the Plea's and Demurrers in course: But if the Plaintiff shall not in such Case enter it with the Register within eight dayes after the same shall be filed, the Defendant may take out process against the Plaintiff for his Ordinary costs of five marks, as if the

the ſame had been heard.

The Dependancy of a former Suit for the ſame matter, is alſo a good plea; and therefore the Defendant ſhall not be put to ſet it down with the Regiſter; But if the Plaintiff be not ſatisfied therewith, the ſame ſhall be referred to one of the Maſters of the Court to certifie the truth thereof; and if it ſhall be determined againſt the Plaintiff, he ſhall pay five pounds coſts to the Defendant; But ſuch reference ſhall be procured by the Plaintiff, and a report thereupon within one

month after the filing of such plea, otherwise the Bill to stand dismist of course, with the ordinary costs of seven Nobles.

If after a Suit commenced at the Common Law, or any other inferiour Court, a Bill shall be exhibited in this Court to be relieved for the same matter, the dependancy of the former Suit shall be admitted as a good plea, and the Defendant not be put to motions for an Election or Dismission, and that plea shall be proceeded in, as in case of

a Plea of a former Suit depending in this Court for the ſame matter.

After a Contempt duly proſecuted to an Attachment with proclamation returned, no Commiſſion to anſwer ſhall be made; nor no Plea or Demurrer admitted, but upon motion in Court, and Affidavit made of the parties inability to travel, or other good matter to ſatisfie the Court touching that delay.

Anſwers.

AFter a Commiſſion once obtained to anſwer, no ſecond Commiſſion ſhall be granted without ſpecial Order of Court upon good reaſon ſhewed to induce the ſame, or the Plaintiffs own aſſent.

An Anſwer to a matter charged as a Defendants own fact, muſt regularly be without ſaying, *To his remembrance*,

brance, or *As he believeth*, if it be laid to be done within ſeven years before, unleſs the Court upon exception taken, ſhall find ſpecial cauſe to diſpence with ſo poſitive an anſwer. And if the Defendant deny the fact, he muſt traverſe or deny it (as the cauſe requires) directly, and not by way of negative pregnant. As if he be charged with a receipt of a ſumme of money, he muſt deny or traverſe that he hath not received that ſum, or any part thereof, or elſe ſet forth what part he hath received. And if a fact be laid to be done with divers circumſtances,

ees, the Defendant muſt not deny or traverſe it literally, as it is laid in the Bill, but muſt anſwer the point of ſubſtance poſitively and certainly.

When the Defendants have anſwered, the Plaintiffs and their Council are ſeriouſly to adviſe of the Anſwers, and if they find that upon the Anſwer alone, without further proof, there be ſufficient ground for a final Order or Decree, to proceed upon the Anſwer without further lengthening of the Cauſe. Or if it be needfull to prove one or a few particular points to reply unto thoſe points, and not to draw

draw into pleading or proofs any more than thoſe neceſſary points, thereby making long books, and putting both ſides to unneceſſary Charges, the Defaulters herein to be puniſhed by paying the charge of the Copies, or otherwiſe, as the cauſe ſhall require.

If a hearing be pray'd upon Bill and Anſwer, the Anſwer muſt be admitted to be true in all points, and no other Evidence to be admitted, unleſs it be matter of Record to which the Anſwer referrs, and is proveable by the Record;

The Plaintiff is therefore to be well adviſed, that the Court be not put to an unneceſſary trouble, and himſelf to a certain charge, in bringing his cauſe to hearing which will not bear a Decree.

Exceptions.

WHen a Plaintiff excepteth to a Defendants Anſwer, he ſhall ſet down his Exceptions in Writing; and if the Anſwer be filed in

in Term time, he ſhall the ſame Term, or within eight dayes after that Term, deliver the ſame Exceptions to the Council whoſe hand is to the Anſwer, or to the Defendants Clerk in Court; And if the Defendant do within eight dayes after ſuch delivery, ſatisfie the Plantiff of the invalidity of thoſe exceptions, or amend the Anſwer in the ſame time, or agree with the Plaintiff, or his Clerk, or Sollicitor, to amend it by ſuch time as they ſhall agree upon, and do amend it accordingly, and pay twenty ſhillings coſts, the

Plaintiff ſhall go on to Reply ; But if the Defendant ſhall fail to do the ſame, or put in a ſecond inſufficient Anſwer, the Plaintiff may get the Anſwer or Anſwers referred : and if the ſame ſhall be ruled inſufficient, the Defendant ſhall pay forty ſhillings coſts. But if an Anſwer be filed in Vacation time, then the Plaintiff ſhall have eight dayes in the beginning of the next Term, if he ſee cauſe to put in his Exceptions, and deliver them in writing in like manner, as before is appointed : and the Defendant within eight days after ſuch delivery to proceed as before is ordered.

If

If the Plaintiff ſhall procure a reference of an inſufficient Anſwer within the time before limited, and the ſame be reported good, the Plaintiff ſhall pay the Defendant forty ſhillings coſts.

If the firſt Anſwer be certified inſufficient, and ruled ſo, the Defendant ſhall pay forty ſhillings coſts as aforeſaid: if the Anſwer was put in in perſon: But if the ſame came in by Commiſſion, the Defendant ſhall have fifty ſhillings coſts, and no new Commiſſion ſhall be awarded for

taking a ſecond Anſwer, unleſs it be by Order, upon Affidavit made of the parties inability to travel, or other good matter, to ſatisfie the Court touching that delay, and firſt paying the coſts of ſuch inſufficient Anſwer, or by the Plaintiff, or his Clerks aſſent for expediting the cauſe. If the ſecond Anſwer be reported inſufficient unto any the points formerly certified, the Defendant ſhall pay three pounds coſts: And upon the third inſufficient, four pounds coſts: And upon a fourth Anſwer certified inſufficient, he ſhall pay five pounds coſts,

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and be examined upon Interrogatories to the points reported insufficient, and shall be committed, until he hath perfectly answered those Interrogatories, and paid the costs, in respect of the great vexation and delay which in such cases will happen to the Plaintiff.

No *Subpœna ad rejungendum*, shall be of force, unless there be a Replication filed in the cause according to the course of the Court, before the issuing out of the said *Subpœna*, or at least before the return thereof: And the parties up-

upon whom such *Subpœna* shall be served, finding no replication filed before the return thereof, shall have the ordinary costs taxed according to the course of the Court.

Examination of Witnesses.

WHen the parties are at issue, and proceed to examine Witnesses, the Interrogatories are to be penned with care, that the same be pertinent, and only to the points

points neceſſary, and the Witneſſes are to be ſorted and examined on thoſe Interrogatories only that their Teſtimony doth extend unto, without the needleſs Interrogatories of matters unneceſſary, immeterial, as well to avoid the charge of both parties, Plaintiff and Defendant, in ſuperfluous examinations, as that apt Interrogatories (which are the life of the cauſe) may be exhibited.

No Witneſs ſhall be examined in Court by the Examiner, without the privity of

of the adverſe party, or of his Clerk who deals for the adverſe party to whom the perſon to be examined ſhall be ſhewed, and a Note of his name and place of dwelling delivered in writing, by ſuch as ſhall produce him; and the Examiner is to take care, and be well ſatisfied that ſuch notice be given, and then ſhall adde to the Title of the Witneſſes Examination, the time of ſuch notice given, and the name of that perſon to whom it is given, and by whom, that at the hearing of the cauſe the Suitor be not delayed upon

upon pretence of want of notice.

When Witneſſes are examined in Court upon a Schedule of Interrogatories, there ſhall be no new Interrogatories put in to examine the ſame Witneſſes, nor ſhall any Witneſſes be examined in Court after the day of Publication, though they were ſworn before, ſo as a Copy of the Rule or Order whereby Publication paſſed, be delivered to the Examiner, that he may take notice thereof.

That all Copies of Bills, Anſwers, Depoſitions, or other Record, or thing whatſoever belonging to the Six Clerks to Copy, ſhall contain fifteen lines at the leaſt in every ſheet of Paper, written fairly, and orderly, and unwaſtfully: And that no ſuch Copy ſhall be henceforth delivered out of the Office, before it be ſigned by ſuch Six Clerk to whom it belongeth with his own proper hand-writing, or by his Deputy in his abſence. Nor any Copy not ſo ſigned, ſhall be made uſe of in Court, or before any Maſter, which

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all Clyents are to take notice of, to the end they may be prepared with such Copies at the hearing of their causes.

And whereas many inconveniencies do frequently arise by undue Copying Bills, Answers, and other Pleadings, before they be filed; so as they are either never filed, or very irregularly; to the prejudice of the Clyent, and trouble to the Court, by unnecessary motions: It is therefore ordered, That no Under-clerk, or his Man, or other for

him, do from henceforth presume to copy any Bill, or other Pleading whatsoever, before it be duly filed with the proper Six Clerk, who ought to file the same.

For preventing of Perjury, and other Mischiefs often appearing to the Court, the Examiner is to examine the Deponent to the Interrogatories directed *seriatim*, and not to permit him to read over, or hear read any other Interrogatories, until that in hand be fully finished, much less is he to suffer the Deponent to have the Interrogatories, and

and pen his own Depoſitions, or depart after he hath heard an Interrogatory read over, untill he hath perfected his Examinations thereunto. And if any Witneſs ſhall refuſe ſo to conform himſelf, the Examiner is thereof to give notice to the Clerk of the other ſide, and to proceed no further in his Examination, without the conſent of the ſaid Clerk; or Order made in Court to warrant his ſo doing.

The Examiner ſhall not examine any Witneſſes to invalid the Credit of any other

Witneſs, but by ſpecial Order of the Court, which is ſparingly to be granted, and upon Exceptions firſt put into writing, and filed with the Examiner without fee, and notice thereof given to the adverſe party, or his Clerk, together with a true Copy of the ſaid Exceptions at the charge of the party ſo examining.

The Examiners (in whom the Court repoſeth much confidence) are themſelves in perſon to be diligent in Examination of Witneſſes, and not intruſt the ſame to mean and inferior Clerks; and are to take

take care to hold the Witneſs to the point interrogated, and not to run into extravagances, and matters not pertinent to the Queſtion, thereby waſting paper for their own profit, of which the Court will expect a ſtrict accompt.

The Examiners are to take care that they employ under them in their Office, none but perſons of known integrity and ability, who ſhall take an Oath, Not to deliver or make known directly, or indirectly, to the adverſe party, or any other, ſave the Deponent, who comes to be examined a-

ny of the Interrogatories delivered to be examined upon any examination by him taken, or remaining in the Examiners Office, or Extract, Copy, or Breviat thereof, before publication be thereof passed, and Copies thereof taken. And if any such Deputy, Clerk, or person so employed, shall be found faulty in the Premisses, he shall be expulsed the Office, and the Examiner who so employed him, shall be also answerable to the Court for such misdemeanour, and to the party grieved, for his costs and dammages sustained thereby:

by: And such Solicitor, or other person, who shall be discovered to have had a hand therein, shall be liable to such censure for the offence, as the Court shall find just to inflict upon him.

In examining of Witnesses the Examiner shall not use any idle Repetitions, or needless Circumstances; nor set down any Answer to the Questions, to which the Examinant cannot depose, other than thus, *To such an Interrogatory this Exa-*

Examinant cannot depose. And in case such impertinences be observed by the Court, the Examiner is to recompence the charge thereof to the party grieved, as the Court shall award.

That after Witnesses examined in Court, there shall be two Rules only given for Publication, (*viz.*) An Ordinary Rule, and then a day to shew cause why Publication should not pass, aud upon the return of a Commission, one Rule only to be

be given, within which times aforeſaid, if the other ſide do not ſhew unto the Court good cauſe to the contrary, Publication ſhall paſs accordingly.

All Pleadings, Commiſſions, Certificates belonging to the Six Clerks to receive, ſhall immediately, upon the bringing in, or return thereof into this Court, be delivered to ſuch Six Clerks own hands, as ſhall be Attorney in the cauſe; or to the hands of his Deputy in his abſence: And not be from henceforth

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in any wiſe kept back; nor any Depoſitions or Anſwers taken by Commiſſion; or other Commiſſion to be opened by any of their Under Clerks, before they be ſo delivered.

No Bills, Warrants, Pleadings, Commiſſions, Decrees, Diſmiſſions, or other Records whatſoever, ſhall from henceforth be carried to be ingroſſed, inrolled, copyed, or otherwiſe uſed by any of the Under Clerks to their Chambers, or elſewhere, out of the Six Clerks

Clerks Office, or Lodgings there. And ſo ſoon as any Clerk ſhall have ingroſſed, inrolled, copyed, or uſed any ſuch Warrant, Pleading, Commiſſion, Decree, or other Record in the ſaid Office, he ſhall bring the Original thereof preſently back to ſuch Six Clerk to whom the cuſtody thereof doth belong, for the more ſafe keeping and diſpoſing thereof according to the ancient uſage.

Commissions.

WHen a Commission is awarded to examine Witnesses, if by default of him that hath the carriage of the Commission, or by his Commissioners nothing is done, he shall bear all the charges that the other side was put unto about that Commission, either for Fees of Court, bringing or entertaining Commissioners, or Witnesses, or otherwise to be be ascertained by the Oath

Oath of the party, or of him that disburſed the money for him, and ſhall renew the Commiſſion at his own charges.

When a Commiſſion is awarded to examine Witneſſes, and the one ſide produceth and examineth all his Witneſſes, and the other ſide doth not, but pray a new Commiſſion, if it be granted, he ſhall bear all the charges of the renewed Commiſſion, both in Court, and in the Country, as well for the charge and entertainment of his own Commiſſioners, as of the Commiſſioners of the other ſide, and the other ſide ſhall be permitted to croſs

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examine the Witneſſes produced by him that reneweth the Commiſſion; but if he will examine any other Witneſſes of his own, then he ſhall bear his own part of the charge; the charges herein mentioned to be aſcertained by the Oath of the party, or of him that diſburſed the money for him.

He at whoſe inſtance a Commiſſion to examine Witneſſes after a former Commiſſion executed and returned, is once renewed, and he by whoſe default, or by default of his Commiſſioners, a former Commiſſion was not executed, & thereupon it is renued, ſhall at his peril examine

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all his witneſſes by that renewed Commiſſion, or examine them in Court by the end of the Tearm, wherein that renewed Commiſſion is retournable without any more or further delay.

That no Commiſsion *ad examinandum teſtes* be executed in *London*, or within ten Miles thereof, without ſpecial order firſt obteyned upon Affidavit made of the parties inabilitie to travel, or other good matter; And that all Depoſitions taken by Commiſsion in *London*, or within ten Miles thereof, without ſpecial order as aforeſaid, ſhall ſtand ſuperſeded and ſuppreſſed *ipſo facto*, and not al-

lowed to be read as Evidence at the hearing of the Caſe. And the parties who ſhall Cauſe the ſame to be ſo executed, ſhall ſuffer ſuch puniſhment for their contempt and irregularitie as the Court ſhall think fit.

Depoſitions.

WHere either partie Plaintiff or Defendant, obteineth an Order to uſe *D*epoſitions of Witneſſes taken in another cauſe, the adverſe partie may likewiſe uſe the ſame without motion, unleſſe he be upon ſpecial reaſon ſhewed to the Court by that partie firſt deſiring the ſame

ſame, inhibited by the ſame order ſo to do.

No motion ſhall be made in Court, or by petition for ſuppreſſing of Depoſitions as irregularly taken, until the ſix Clarke not towards the cauſe have been firſt attended with the complaint of the partie greived, and ſhall certify the true ſtate of the Fact to the Court, with their opinion: If the Attourneys or Clarkes on either ſide, ſhall not for the caſe of their Clyents agree before them, for which purpoſe a rule for attendance of the ſix Clarke in ſuch caſe, ſhall be entred of courſe with the Regiſter at the deſire of the partie complain-

ing, which ſhall warrant their proceedings, and certificate to the Court.

Cauſes to be ſet downe for hearing.

THe ſix Clarkes who are the only Attourneys in this Court, ought to inform themſelves continually of the ſtate and proceedings of their Clyents cauſes, whereby they may be able to defend their Clyents, and to give account to the Court as the Attourneys in all other Courts do, and not to leave the care and knowledge thereof upon their under Clarks who

who attend not in Court, and the Clyents and ſuch as follow their cauſes, are to acquaint their Attourneys for that purpoſe.

Such as deſire to have their cauſes ſet down for hearing, muſt repair to the ſix Clarke that is Attourney in the cauſe, at leaſt ſix dayes before the end of the Tearm, that the ſix Clark may inform himſelf of the ſtate of the Cauſe, of the long or ſhort dependance thereof in Court, of the Antiquity of the publication, of the weight or value of the cauſes. and all other Circumſtances material to inform the Lord Chancellour, Lord Keeper, or Maſter of the

Rolls of the time of the setting down of causes, and the six Clark may not refuse to offer the same to be set down, if he be attended in such time as aforesaid, nor come unprepared to informe the Lord Chancellour, Lord Keeper, or the Master of the Rolls, of the nature and circumstance of the cause aforesaid. And neither he, nor any of his under Clarks, nor any of the Registers, are to take any Fee, Gratuity, or Reward for the same.

No money, or other reward, shall in any wise be exacted, or taken directly or indirectly by any of the six Clarks, or any of the Registers for, or in their behalfe

halfe, for the preferring, and ſetting down of any cauſe for hearing, but only ſuch Fees as are behind, and unpaid of their termly Fees and Duties, (if any be) and if any caſe happen to be ſet down for hearing, wherin they ſhall not have been ſatisfied their due Fees and Duties, they may alleadge the ſame in ſtay of hearing of the cauſe.

Proceedings in hearing Cauſes.

WHere no Councel appears for the Defendant at the heating, and proces appears to haue been duly ſerved,

ved, the anſwer of ſuch Defendant ſhall be read, and if the Court upon ſuch hearing ſhall find cauſe to Decree for the Plaintiff, yet a day ſhall regularly be given to the Defendant to ſhew cauſe againſt the ſame, but before he be admitted thereunto, he ſhall pay downe to the plaintiff, or his Attourney in Court, ſuch coſts as the Court upon that hearing ſhall aſſeſſe, and the order is to be penned by the Regiſter accordingly, (*Viz.*) *It is decreed ſo and ſo, &c.* Unleſſe the Defendant ſhall by ſuch a day pay to the plaintiff, or his Attourney in Court coſts, and ſhew good cauſe to the contrary, and ſuch

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Defendant upon his ſhewing cauſe, ſhall firſt produce a Certificate from the Plaintiffs Attourney in Court, that he hath paid the coſts, or Affidavit of tender or refuſal thereof.

Contempts.

ALL proces of contempt ſhall be made out into the County where the party preſented is reſident, unleſſe he ſhall be then in, or about *London*, in which caſe it may be made into the Country where the partie then is. And if any perſon ſhall be taken upon proces otherwiſe, or irregularly iſſu-

issued, the partie so taken first appearing unto, and satisfying the proces which did regularly issue against him, shall be discharged of his contempt, and have his full costs to be taxed of course by the six Clarkes not towards the cause, for such undue or irregular prosecution from the time that the error first grew, without motion or other order.

Every Suitor who prosecuteth a Contempt, shall do his best endeavour to procure each several proces to be duely served, and executed upon the partie prosecuted, and his willful default therein appearing to the Court, such person offending

shall

shall pay unto the party grieved good costs, and lose the benefit of the proces returned without such endeavour.

All attachments in proces shall be discharged upon the defendants payment, or tender to the Plaintiffs Clark and refusall of the ordinary costs of the Court, and fileing his Plea, Answer or Demurrer (as the case regularly requires) but upon motion in Court, or petition in that behalf.

And if after such conformity and payment of the costs (or tender and refusal thereof) any further prosecution shall be had of the said contempt, the party prosecuted shall be discharged with his costs.

If

If after appearance, and Interrogatories exhibited as aforesaid, the partie appearing shall depart before he be examined (without leave of the Court) he is upon motion and certificate from the Register of such his departing and not being examined, and of the Interrogatories exhibited from the Examiner, to stand committed without further Day given unto him, and is not to be discharged from such his contempt untill he hath been examined and cleered of his contempt; And if he shall upon his examinations, or by proofs be found in Contempt, he shall cleere such his con-

contempt, and pay the Profecutor his coſts, before he be diſcharged of his Impriſonment. And although he be cleered of his ſaid contempt, yet he ſhall have no coſts, in reſpect of his diſobedience in not being examined without the Profecutors trouble and charges in moving the Court as aforeſaid.

In Caſe of profecution of a Contempt for breach of an Order of the Court, or otherwiſe grounded upon an affidavit, the Interrogatories ſhall not be extended to any other matter then what is comprehended in the ſaid Affidavit or Order. And if any other ſhall

be

be exhibited, the partie examined may for that reaſon Demurre unto them, or refuſe to anſwer them.

Where the partie proſecuted upon a Contempt, hath denyed it, or the ſame doth not clearly appear by his examinations, the Proſecutor may take out a commiſſion of Courſe to prove the Contempt, and in ſuch caſe the partie proſecuted may name one Commiſſioner to be preſent at the Execution of the Commiſſion, and may henceforth (notwithſtanding the former uſage to the contrary) croſſe Examine the Witneſſes produced againſt him to

prove

prove the Contempt, but is not to examine any Witneſſes on his part, unleſſe he ſhall ſatisfie the Court touching ſome matter of fact, neceſſary to be proved for clearing the truth. In which caſe the Court if there be cauſe, will give leave to him to Examine witneſſes to ſuch particular points ſet down; and the otherſide may croſſe Examine ſuch Witneſſes, But the Interrogatories on both ſides are to be included in the Commiſſion.

Where a contempt is proſecuted againſt one, who by reaſon of Age, Sickneſs, or other cauſe is not able to travell,

vel: Or in caſe the ſame be againſt many Perſons who are Servants or Workmen, that live farr off the Court, will upon Motion and Affidavit thereof, grant a Commiſſion to Examine them in the County, which Commiſſion ſhall be ſued out and Executed at the charge of the Perſon or Perſons deſiring it, Directed to ſuch indifferent Commiſſioners as the Proſecutors of the Contempt ſhall name (as in other caſes) and one Commisſioner only at the Nomination of the partie proſecuted as aforeſaid, Which Commisſion ſhall be executed at ſuch convenient time and place, as the ſix Clarks not towards

wards the cauſe upon hearing the Clerks upon both ſides ſhall ſet down.

Upon every Examination and proof of a Contempt referred to any of the Maſters of the Court to certifie whether the Contempt be confeſſed or proved, or not: The Maſter in his Certificate thereof made to the Court, ſhall likewiſe aſſeſs and certify the coſts to either party as there ſhall be cauſe, without other Order or Motion made for that purpoſe.

Commitment.

THe Court being tender of the liberty of mens Per-

sons, and to avoid their Imprisonment upon malicious Affidavits, which are often made by one mean and ignorant Person, and which hath heretofore by the course of the Court drawn on a Commitment, doth order, that from henceforth, where Oath shall be made of misdemeanour in bearing or abusing, the party upon sueing the Process or Orders of the Court, the party offending shall stand committed upon motion, and no examination is in that case to be admitted.

And when Affidavit shall be made by two persons of Scandalous or Contemptuous words

words againſt the Court or the proceſs thereof, the party offending ſhall likewiſe ſtand committed upon motion, without any further examination. And a ſingle Affidavit in ſuch caſe ſhall be ſufficient to ground an Attachment, Whereupon ſuch Perſon ſhall be brought in to be examined: And if the miſdemeanour ſhall be confeſſed, or proved againſt him, he ſhall ſtand committed untill he ſatisfie the Court touching his ſaid miſdemeanour, and pay the Proſecutor his coſts: And if he ſhall not be thereof found guilty, ſave by the Oath of the party who made

such Affidavit, he shall be discharged, but without any costs, in respect of the Oath made against him as aforesaid.

Decrees and Dismissions.

THat all Decrees and Dismissions pronounced upon hearing the cause in this Court be Drawn up, Signed, and Inrolled before the first Day after the next *Michaelmas*, or *Easter* Term, after the same shall be so pronounced respectively, and not at any time after, without special leave of the Court.

When the party is committed,

mitted, or brought in by a Serjeant at Arms for breach of a Decree, he is not to be inlarged untill he hath performed the Decree in all things that are to be presently done, and given Security by Recognizance with Sureties, as the Court shall order to perform the other parts of the Decree (if any be to be performed) at future dayes and times appointed by the Decree.

No Decree or Dismission shall be presented by the Register of this Court, or his Deputy, or any other, to the Lord Chancellor, Lord Keeper, or Master of the Rolls, to

be Signed, before it be Signed by that Six Clark to whom it belongeth, of his proper hand writing: Or by his Deputy in his absence.

To the intent the Decrees and Dismissions of this Court may be easily found upon search, the Six Clerks are to keep a publick Book for the entring all decrees and Dismissions which hath been made and signed by the Lord Chancellour since the Nine and Twentieth day of *May* last, and which shall be made and so signed in this Court: And to that end the Register shall at the beginning of every Term, deliver into one of the

the Six Clarks a Liſt of all Decrees and Diſmiſſions Signed by the Lord Chancellour, the Term and Vacation before.

If a Bill be regularly and juſtly diſmiſſed of Courſe, or by order for want of proſecution, no motion ſhall be admitted for the retainer thereof, without a Certificate from the Defendants Attourney in Court, that the coſts of the Diſmiſſion are pay'd, to the end unneceſſary charge to the parties by ſeveral motions for one and the ſame matter, may henceforth be avoyded.

Masters.

THat the Masters do not passe any exemplifications of Depositions taken in Chancery upon a bare sight of the Copies only, without first calling the Officer or Officers, who have the custody of the Records, or Originals of such Copies, or some sworn Clerk of his, or their Office, who are to produce the same before them, to warrant their Signing thereof.

The Masters are not upon the importunity of Councel, (how eminent soever) or their Clients, to return speciall Cer-

Certificates to the Court, unleſs they are required by the Court ſo to do, or that their own judgement in reſpect of difficulty leadeth them unto it, ſuch kind of Certificates for the moſt part occaſioning a needleſs trouble, rather than eaſe to the Court, and certain expence to the Suitor.

Their Certificates and Reports are to be drawn as ſuccinctly as may be (preſerving the matter clearly for the judgement of the Court) and without recital of the ſeveral points of the Orders of Reference (which do ſufficiently appear by the Orders themſelves).

ſelves, or the ſeveral Debates of Council before them: unleſs that in caſe where they are doubtful, they ſhortly repreſent to the Court the reaſons which induce them ſo to be.

The Maſters of the Court are to take notice, That when the Court requires to be ſatisfied from them, touching any matter alledged to be confeſſed, or ſet forth in the Defendants anſwer, It is intended, that without further Order, they ſhould take conſideration of the whole Anſwer or Anſwers of the Defendants, and certifie not only whether the matter be ſo confeſſed or ſet forth, but alſo any other matter avoiding

that

that confeſſion, or ballancing the ſame, that the Court may receive a clear and true Information.

The Maſters in taking Affidavits, and adminiſtring of Oaths, in Caſes duly preſented unto them, are to be circumſpect and wary, that the ſame be reverently and knowingly given and taken, and are therefore to adminiſter the ſame themſelves to the party, and where they diſcern him raſh or ignorant, to give him ſome conſcionable admonition of his duty, and be ſure he underſtand the matter contained in his Affidavit, and read the ſame over, or hear it read in his preſence

ſence, and ſubſcribe his name or mark thereunto, before the ſame be certified by the Maſter, who is not to receive or certifie any *Affidavit*, unleſs the ſame be fairly and legibly written without blotting, or Interlineation of any word of ſubſtance.

In all matters referred to the Maſters of the Court, their Certificate (not being to ground a Decree) if it be poſitive, is to ſtand, and Proceſs may be taken out to enforce performance thereof, without further motion, unleſs the adverſe party, upon notice given (to his Atturny or Clerk in Court,) that ſuch report is filed againſt him, ſhall within eight dayes after

after ſuch notice (if it be given in Term, or while the general Seals for Motions are held, or within four dayes of the next Term, if it be given after) obtain ſome Order in Court to controul or ſuſpend the ſame, And in caſe of an inſufficient Anſwer certified by the Maſters, the Plaintiff may immediately take out Proceſs againſt the Defendant for his coſts, and to make a better Anſwer, as hath formerly been uſed.

Where after Certificate or Report made by the Maſters of the Court, either Partie ſhall appeal from the ſame, to the judgment of the Court, he ſhall firſt file his Exceptions thereunto

unto briefly, with the Regiſter, and depoſite with him fourty ſhillings to be paid to the other partie for his Coſts, if he prevail not in ſuch Appeal: And then the Regiſter ſhall enter ſuch cauſes of Appeal in a Paper, in order as they are brought unto him, to be determin'd by the Court, in courſe upon days of Motions, And notice thereof to be given by the partie appealing, to the Clerk of the other ſide. And alſo the Regiſters Paper to be ſet up in the Office two dayes before; And if the Court ſhall not alter the Maſters Report, then the fourty ſhillings depoſited to be paid to the party defending the

ſame, with ſuch increaſe as the Court ſhall find cauſe to impoſe, otherwiſe to be reſtored to the party appealing, and both without charge.

The Maſters Extraorninary ſhall not within twenty miles of *London*, take any Affidavits, or Acknowledgment of Deeds, or Recognizances, or do any other Act incident to the place of Maſter of the Chancery. And to the end it may appear, whether any Maſter Extraordinary ſhall notwithſtanding preſume ſo to do, Every ſuch Maſter ſhall expreſs the name of the Town and County where he ſhall take any *Affidavit*, or the Acknowledgment of any Deed

or

or Regcognizance, otherwiſe the ſame ſhall not be held Authentical, nor omitted to be Filed or Inrolled.

Curſitor.

WHereas there is an Irregular practice lately introduced, of making forth Original Writs of *Clauſum fregit*, in Treſpaſs, without any other cauſe of Action therein expreſſed of Returns paſt, when in truth the proper cauſe of Action, is either Debt, Caſe, Ejectment, or ſome other cauſe of Action; And by proceſs thereupon, the Defendant is not only

only usually arrested, but frequently proceeded against to the Outlawry, to the great damage of the Subject, and the loss and diminution not only of the proper Original Writs issuing out of this Court, but also of his MAJESTIES Revenue for the casual Fines thereupon due and payable. It is therefore Ordered.

That no Cursitor of this Court from, and after the first day of Trinity Term next ensuing, make, or cause to be made any Writs of *Clausum fregit*, or *Clausum & Domum fregit* within the City of *London*, without special Warrant from the Lord Chancellor, or

Lord Keeper of the Great Seal of *England*, or Maſter of the Rolls for the time being, unleſs it be made appear by Affidavit, or ſome other probable evidence that the ſame is the true and proper cauſe of Action.

That no Curſitor of any other County do make, or permit to be made within his reſpective Diviſion any of the ſaid Writs of *Clauſum fregit*, or *Clauſum & Domum fregit*, of any other Return, then of the laſt Return of every reſpective Term, unleſs it be to warrant Arreſts, and *Teſtatum Capias* only.

That no Curſitor ſhall from and

and after the end of *Michaelmas* Term next, enſuing, make, or permit to be made within his reſpective Office and Diviſion, any Original Writs whatſoever of any Return paſt, unleſs he ſhall receive the Inſtructions for making thereof within the Term wherein the ſaid Writs are to be retournable, Or at the fartheſt, on, or before the firſt Eſſoign day of the next ſucceeding Term, without ſpecial Warrant from the Lord Chancellour, or Lord Keeper of the Great Seal of *England*, or Maſter of the Rolls for the time being, Or good cauſe to be allowed of

by the Principal, and Assistants of the Company of the Cursitors for the time being, or the Major part of them; at their Publick Meetings according as heretofore hath been used.

The Cursitors are to take care that they imploy under them in their Office, none but Persons of known integrity and ability, and if any Clerks, or Persons so imployed, shall be found faulty in the premisses, he shall be expulsed the Office, And the Cursitor who so imployed him, shall be answerable to the Court for such Misdemeanours, And such Person, or Persons, who shall be discovered to do, or proceed

ceed otherwise then is before mentioned, shall be liable to such censure for his offence, As the Court shall find just to inflict upon him.

Petitions.

NO Injunction for stay of Suit at Law shall be granted, revived, dissolved, or stayd upon Petition, Nor any Injunction of any other nature, shall pass by Order upon Petition, without notice, and a Copy of the Petition first given to the other side, And the Petition filed with the Register, and the Order entred.

No Sequestration, Dismission, Retainers upon Dismissions, or final Orders are to be granted upon Petition.

No former Order made in Court is to be altered, or explained upon a Petition; Or Commitment of any Person taken upon Process of Contempt to be discharged, but upon hearing the adverse party, his Attorney or Clerk toward the Cause.

Paupers.

After an Admittance *In forma pauperis*, No Fee, Profit, or Reward shall be taken

taken of ſuch party admitted by any Councellor or Atturny, for the diſpatch of the *Paupers* buſineſs, during the time it ſhall depend in Court, and he continued *in forma pauperis*; nor any Contract, nor Agreement be made for any Recompence, or Reward afterwards. And if any perſon offending herein ſhal be diſcovered to the Court, he ſhall undergo the diſpleaſure of the Court, and ſuch further puniſhment as the Court ſhall think fit to inflict upon him, and the party admitted, who ſhall give any ſuch Fees or Reward, or make any ſuch Contract or Agreement, ſhall be from thenceforth diſpaup-

ed, and not be afterwards admitted again in that Suit to prosecute *in forma pauperis.*

If it shall be made appear to the Court, That any person prosecuting *in forma pauperis*, hath sold or contracted for the benefit of the Suit, or any part thereof, whiles the same depends, such cause shall be from thenceforth totally dismissed the Court, and never again retained.

Such Councel or Atturney as shall be assigned by the Court, to assist the person admitted *in forma pauperis*, either to prosecute or defend, may not refuse so to do, unless they satisfie the Lord Chancellour,

or

or Lord Keeper of *England*, or Maſter of the Rolls, who granted the admittance, with ſome good reaſon of their forbearance.

That Councellor who ſhall move any thing to the Court, on the behalf of a perſon admitted *in forma pauperis*, ought to have the Order of Admittance with him, and firſt to move the ſame before any other motion. And if the Regiſter ſhall find that ſuch perſon was not admitted *in forma pauperis*. he ſhall not draw up any Order upon the ſecond motion, made by any ſuch Council, but he ſhall loſe the fruit of ſuch ſecond motion, in re-

respect of his abuse to the Court.

No process of Contempt shall be made forth, and sent to the Great Seal, at the Suit of any person prosecuting as Plaintiff *in forma pauperis*, untill it be signed by the Six Clerk, who deals for him, and the six Clerks are to take care, that such process be not taken out needlesly, or for vexation, but upon just and good grounds, as they will answer it to the Court, if the contrary shall appear.

And lastly, it is Ordered, that all Masters of the Court of Chancery, Councellors, and all Officers, Ministers, Clerks, and Solicitors in the said Court,

do

do obſerve theſe Orders, which are to continue, until upon further conſideration and experience, any Alterations ſhall be thought fit to be made therein.

Clarendon.

HAR. GRIMSTON.

FINIS.

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